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8   UNITED STATES DISTRICT COURT

9   CENTRAL DISTRICT OF CALIFORNIA

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11   FREDERICK LEE JACKSON,   )   CASE NO. CV 12-9303 PSG (RZ)
)
12   Petitioner,   )
)   ORDER SUMMARILY DISMISSING
13   vs.   )   SUCCESSIVE HABEAS PETITION
)
14   DAVID B. LONG, WARDEN,   )
)
15   Respondent.   )
)
16   ─────────────────────────────────

17   Frederick Lee Jackson presents a successive habeas petition that lacks the

18   required Court of Appeals authorization for such a petition. The Court will dismiss the

19   petition and the action summarily for lack of jurisdiction to entertain it.

20   Rule 4 of the Rules Governing Section 2254 Cases in the United States

21   District Courts provides that "[i]f it plainly appears from the face of the petition and any

22   exhibits annexed to it that the petitioner is not entitled to relief in the district court, the

23   judge shall make an order for its summary dismissal and cause the petitioner to be

24   notified."

25   Section 2244 of Title 28, part of the Antiterrorism and Effective Death Penalty

26   Act, requires that the district court dismiss most successive habeas corpus petitions:

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1   (b)(1)   A claim presented in a second or successive habeas corpus

2 application under section 2254 that was presented in a prior application shall

3 be dismissed.

4   (2) A claim presented in a second or successive habeas corpus

5 application under section 2254 that was not presented in a prior application

6 shall be dismissed unless –

7   (A) the applicant shows that the claim relies on a new rule

8   of constitutional law, made retroactive to cases on collateral

9   review by the Supreme Court, that was previously unavailable;

10   or

11   (B) (i) the factual predicate for the claim could not have

12   been discovered previously through the exercise of due

13   diligence; and

14   (ii) the facts underlying the claim, if proven and viewed

15   in light of the evidence as a whole, would be sufficient to

16   establish by clear and convincing evidence that, but for

17   constitutional error, no reasonable factfinder would have found

18   the applicant guilty of the underlying offense.

19   (3)(A) Before a second or successive application permitted by this

20 section is filed in the district court, the applicant shall move in the appropriate

21 court of appeals for an order authorizing the district court to consider the

22 application.

23   .   .   .

24   In *Felker v. Turpin*, 518 U.S. 651, 656-57, 116 S. Ct. 2333, 135 L. Ed. 2d 827

25 (1996), the Supreme Court noted that this statute transferred the screening function for

26 successive petitions from the district court to the court of appeals. This provision has been

27 held to be jurisdictional; the district court cannot entertain a successive petition without

28 prior approval from the Court of Appeals. *Cooper v. Calderon,* 274 F.3d 1270, 1274 (9th

1   Cir. 2001). The district court therefore either must dismiss a successive petition for lack

2   of jurisdiction, or it may transfer the action, in the interest of justice, to the court where the

3   action properly could have been brought. 28 U.S.C. § 1631; *Pratt v. United States*, 129

4   F.3d 54, 57 (1st Cir. 1997).

5   Petitioner attacks his 2005 conviction of murder and other charges. He

6   previously challenged that conviction on habeas in this Court, however, and the Court

7   denied relief on the merits and dismissed that action with prejudice. *See* docket in *Jackson*

8   *v. Herndon*, No. CV 09-1145 RSWL (RZ) (Judgment filed September 25, 2009). Petitioner

9   unsuccessfully moved in this Court for reconsideration and for a Certificate of

10 Appealability. The Ninth Circuit also denied a Certificate on November 30, 2011. In July

11 of 2012, Petitioner filed a habeas petition in the California Supreme Court, apparently

12 pursuing the claims he now wishes to assert here. That court denied relief on October 10,

13 2012.

14   Petitioner's current petition does not enjoy the required Ninth Circuit

15 authorization for successive petitions. No factors appear which make it preferable to

16 transfer this case to the Court of Appeals, rather than dismissing it.

17   Accordingly, IT IS ORDERED that the Petition is dismissed.

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19   DATED: November 2, 2012

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22   PHILIP S. GUTIERREZ
            UNITED STATES DISTRICT JUDGE

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